

**CHALLENGE COST-SHARING AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_ by and between the Department of the Army (hereinafter  
the "Government"), represented by the District Engineer, U.S.  
Army Engineer District \_\_\_\_\_, and  
\_\_\_\_\_ (hereinafter the "Partner"), represented by  
\_\_\_\_\_.

WITNESSETH, THAT:

WHEREAS, the Government manages lands and waters at  
Beautiful Lake which includes recreational opportunities for the  
public, and

WHEREAS, the installation of an accessible fishing platform  
at Scenic Recreation Area on Beautiful Lake will increase the  
recreational opportunities for the public, and

WHEREAS the Partner is interested in promoting and assisting  
the Government in providing this accessible fishing platform, and

WHEREAS, it is mutually beneficial to the Government and the  
Partner to work cooperatively to make this accessible fishing  
platform available to the public, and

WHEREAS, the Partner, in order to assist the Government in  
this project has voluntarily agreed to pay a portion of the cost,  
and

WHEREAS, Section 225 of the Water Resources Development Act  
of 1992, Public Law 102-580, (Oct 31, 1992), authorizes the  
Secretary of the Army to accept contributions from the Partner  
and apply those contributions to the Project, and

WHEREAS, the Government authority and capability to and the Partner have the full perform as hereinafter set forth and intend to cooperate in financing and challenge cost-sharing accordance with the terms of this Agreement;

NOW THEREFORE, the Government and the Partner agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

a. The term "Project" shall mean a 12' x 16' fishing platform with a 5' x 20' platform walkway, aluminum frame, pressure-treated wood surface, and 5' x 30' x 4' concrete in sidewalk leading from the parking lot to the platform in Scenic Recreation Area on Beautiful Lake, as generally described in the \_\_\_\_\_, \_\_\_\_\_ dated \_\_\_\_\_, 19 \_\_\_\_ and approved by \_\_\_\_\_ on \_\_\_\_\_, 19 \_\_\_\_ .

**[SPECIFY THE APPROVED PROJECT REPORT, RELEVANT DATES AND APPROVAL AUTHORITY]**

b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to construction of the project.

c. This Agreement in no way restricts the Government from participating in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations, and individuals.

d. All donated property, facilities, and improvements placed on Government land as well Agreement shall become the as any work accomplished under this property of the Government.

#### ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds appropriated by the Congress of the United States (hereinafter the "Congress"), and using funds provided by the Partner, shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies. The award of contracts, modifications, or change orders and performance of all work on the Project (whether the work is performed under contract or by the Government personnel) shall be exclusively within the control of the Government.

b. The Government shall provide \_\_\_\_\_ .



c. The Partner shall provide \_\_\_\_\_ .

**[NOTE: AGREEMENTS IN WHICH THE PARTNER AGREES TO CONTRIBUTE FUNDS SHOULD SPECIFY A SUM CERTAIN OR A PERCENTAGE OF TOTAL PROJECT COSTS. IF THE PARTNER AGREES TO PROVIDE A PERCENTAGE OF TOTAL PROJECT COSTS, THE AGREEMENT SHOULD SPECIFY EITHER THAT THE PARTNER AGREES TO CONTRIBUTE THAT PERCENTAGE UP TO A COST CAP OR THAT THE PARTNER AGREES TO CONTRIBUTE THAT PERCENTAGE REGARDLESS OF THE FINAL AMOUNT OF THE TOTAL PROJECT COSTS.]**

d. The Government shall perform a final accounting to determine the contributions provided by all parties to this Agreement and to determine whether each has met its obligations under paragraphs b and c of this Article.

e. No Federal funds may be used to meet the Partner's share of total project costs under this Agreement.

f. The Partner shall not use Government-supplied materials and equipment, or allow their use, for other than authorized project purposes.

### ARTICLE III - METHOD OF PAYMENT

**[NOTE: THIS ARTICLE IS BASED ON THE PARTNER CONTRIBUTING A PERCENTAGE OF TOTAL COST. IT MUST BE AMENDED APPROPRIATELY IF THE PARTNER WILL CONTRIBUTE A SUM CERTAIN, MATERIALS, PERSONAL PROPERTY, OR SERVICES.]**

a. The Government shall maintain current records of contributions provided by the Partner and a current projection of total project costs. At least quarterly, the Government shall provide the Partner with a report setting forth all contributions provided to date and the current projection of total project costs, of the components of total project costs, of each party's share of total project costs, and of the Partner's contribution required in accordance with Article II.c. of this Agreement. On the effective date of this Agreement, total project costs are projected to be \$\_\_\_\_\_, and the Partner's contribution required under Article II.c. of this Agreement is projected to be \$\_\_\_\_\_. **[NOTE: PROJECTIONS SHOULD BE ADJUSTED AS APPROPRIATE FOR INFLATION THROUGH THE PERIOD OF CONSTRUCTION.]** Such amounts are estimates subject to adjustment and are not to be construed as the total financial responsibilities of the Government and the Partner.

b. The Partner shall provide the contribution required under Article II.c. of this Agreement in accordance with the following

provisions: Not less than 30 **[NUMBER OF DAYS, 30 OR MORE]** calendar days prior to issuance of the solicitation for the first construction contract, the Government shall notify the Partner of the funds required from the Partner to meet its projected contribution, including its share of the Government's financial obligations incurred prior to the commencement of the period of construction. Prior to the issuance of the solicitation, the Partner shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the Government's Finance and Accounting Officer **[TITLE OF APPROPRIATE GOVERNMENT REPRESENTATIVE]**. The Government shall draw from the funds provided by the Partner such sums as the Government deems necessary to cover: (a) the Partner's share of the Government's financial obligations incurred prior to the commencement of the period of construction; and (b) the Partner's share of the Government's contractual and in-house financial obligations as they are incurred during the period of construction. In the event the Government determines that the Partner must provide additional funds to meet its obligation, the Government shall notify the Partner of the additional funds required. Within 60 **[NORMALLY 60]** calendar days thereafter, the Partner shall provide the Government with a check for the full amount of the additional required funds.

c. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Partner with the results of the final accounting. The final accounting shall establish total project costs, each party's contribution provided thereto, and each party's required share thereof.

1. In the event the final accounting shows that the total contribution provided by the Partner is less than its required share of total project costs, the Partner shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Partner's required share of total project costs.

2. In the event the final accounting shows that the total contribution provided by the Partner exceeds its required share of total project costs, the Government shall, subject to the availability of funds, refund the excess to the Partner no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Partner, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE IV - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for

breach of this agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE V - FEDERAL AND STATE LAWS

In exercise of their respective rights and this Agreement, the Government and the Partner with all applicable Federal and State laws and obligations under agree to comply regulations, including, but not limited to, Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and the Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulations 600.7, entitled "Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

#### ARTICLE VI - RELATIONSHIP OF PARTIES

a. In the exercise of their respective rights and obligations under this Agreement, the Government and the Partner each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

b. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

#### ARTICLE VII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admit to any share or part of this Agreement, or to any benefit that may arise therefrom.

## ARTICLE VIII- INDEMNIFICATION

The Partner shall hold and save the Government free from all damages, including damages to Government-supplied materials and equipment made available for the Partner's use beyond normal wear and tear, arising from services the Partner performs or provides for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE IX - TERMINATION OR SUSPENSION

a. If at any time the Partner fails to fulfill its obligations under this Agreement, the District Engineer shall terminate this Agreement or suspend future performance under this Agreement unless he/she determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Partner, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Partner elects to terminate this Agreement.

c. In the event that either party elects to terminate this Agreement pursuant to this Article, or Article II.b. of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article II.d. of this Agreement.

d. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.



## ARTICLE X - NOTICES

a. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by telegram, or mailed either by first-class,

registered, or certified mail, as follows:

If to the Partner: Mayor  
City Hall  
Address  
City, State 00000

If to the Government: District Engineer  
U.S. Army Engineer District  
Address  
City, State 00000

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Commander, \_\_\_\_\_ District.

The Department of the Army

The City of \_\_\_\_\_

\_\_\_\_\_  
BY:  
Patricia M. Brown  
Colonel, Corps of Engineers  
District Engineer

\_\_\_\_\_  
BY:  
Joanna Q. Public  
Mayor

DATE:

DATE: